IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO.44 OF 2002

Mr. Goolam E. Vahanvati
Advocate General for the State
of Maharashtra ..Petitioner.

Vs.

Vishny Somayya Gundeti ..Respondent.

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Mr. K.K. Tated, Assistant Government Pleader for the Petitioner.
Mr. Suresh Bhosale for the Respondent.

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CORAM: KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

28th April, 2006.

P.C. :

1. The Petitioner, the then Advocate General for the State, has filed this Petition under the provisions of the Maharashtra Vexatious Litigation Prevention Act. 1971 against the Respondent by alleging that he is habitually and without any reasonable grounds instituting various vexatious proceedings, the details whereof are as under:

2. Mr. Ashok Valsangkar an advocate for Samayya Ramayya

Gundeti, aged 80 years, Mrs. Radhabai Samayya Gundeti, aged 75 years, Prabhakar Samayya Gundeti and Ramesh Samayya Gundeti, residing at 102-C/75 Bhawani Peth, Solapur have stated that the Respondent is the eldest son of Samayya Rammayya Gundeti and Radhabai Samayya Gundeti. It is stated that Samayya Gundeti filed Regular Suit No.342 of 1981 before the Civil Judge, Junior Division, Solapur against the Respondent and prayed for perpetual injunction. In the said suit perpetual injunction was sought in terms that the Respondent would not interfere with peaceful enjoyment of constructed property which is exclusively owned by Samayya Gundeti upon the lease hold plot bearing Final Plot No.1028/75, Bhawani Peth, Solapur. An injunction was sought against the Respondents from recovering rent from the tenants in the said property. The suit was decreed against the Respondent on 30th January, 1988.

3. Thereafter the Respondent preferred Civil Appeal 286 of 1988 before the District Court, Solapur challenging the said decree. On 17th July, 1991 the said appeal was dismissed. Thereafter the

Respondent preferred Second Appeal 531 of 1991. In the said Appeal, he had also preferred Civil Application 4534 of 1991 for stay of the order dated 30th January, 1988. The Second Appeal was admitted and stay was granted by this Court. On 22nd November, 1992, since the objections were not removed, the appeal was dismissed. However, this Appeal was restored in view of the order passed in Civil Application 1061 of 1995 on 30th October, 1996. Since then the Second Appeal is pending. It is submitted that even prior to the above proceedings, Summary Case No.6972 of 1975 under Sections 110 and 117 of the Bombay Police Act was filed against the Respondent in connection with an offence dated 24th November, 1975. The Respondent was convicted on 27th November, 1975 and was sentenced to pay fine of Rs.25/- in default Simple Imprisonment for seven days.

4. The Petitioner has also given details about various civil and criminal cases filed by the Respondent, which are as under :

1) Criminal Case No.172 of 1999 in the court of J. M. F. C. Solapur under Sections 454, 457, 380, 411, 414, 427. 342 r/w. 34 of I. P. C.

2) Regular Civil Suit No.1030 of 1998 in the court of Civil Judge, Sr. Division Solapur u/s 6 of Specific Relief Act in respect of house property bearing final plot no.102-C/75 situated at Solapur.

3) Regular Civil Suit No.740 of 1998 in the Court of Civil Judge, Sr. Division, Solapur for perpetual injunction in respect of house property bearing final plot no.102-C/75 situated at Solapur

4) R. C. C. No. 228 of 2000 in the Court of J. M. F. C. Solapur u/s. 324. 328, 452, 506 (2) r/w. 34 of I. P. C. Dispute arising out of house property bearing final plot no. 102-C/75 situated at Solapur

5) C. R. NO. 93 of 2000 in the Court of J. M. F. C. Solapur u/s. 325, 506 r/w. 34.

6) Legal Notice issued dated 15th January, 2001 claiming Rs.5,00,000/-. Dispute is in respect of house property bearing final plot no. 102-C/75 situated at Solapur.

7) Criminal Case No. RCC No. 60 of 1989 u/s. 325, 504 r/w. 34 of I. P. C. against father and brother Ramalu @ Ramesh Gundeti (Matter disposed of. Acquittal).

8) Respondent lodged complaint at the Jain Road Police Station which was registered by them as CR No.237 of 1988 under sections 325, 504 r/w. 34 of Indian Penal Code against father and brother in which father and brother of the respondent acquitted.

9) Respondent filed Civil Appeal No.351 of 1992 before the District Court at Solapur, challenging the order dated21-08-1992. On 01-04-1996 the Hon'ble Court dismissed the appeal of the respondent and confirmed the Judgment and Decree of the Trial Court dated 21-08-1992.

10) Respondent's wife Somakka Vishnu Gundeti had filed Criminal Case No.527 of 1998 before the J. M. F. C. Solapur, against the father, mother, brothers, sister-in-laws of Respondents and 4 others. The said proceedings were filed under Sections 323, 324, 352 r/w. 34 of Indian Penal Code.

5. The Petitioner has thereafter prayed to pass an order that no proceeding shall be filed by the Respondent herein in any Court without previous leave of this Court and to stay all the legal proceedings instituted by the Respondent in any Court / competent Court of jurisdiction.

6. We have heard the learned counsel appearing for the parties and have also perused the relevant provisions of the Maharashtra Vexatious Litigation Prevention Act, 1971. After considering the matter and the relevant provisions, in our opinion, the Respondent has abused the process of law by resorting to vexatious litigation. The Respondent being the son of Samayya Gundeti and Radhabai Gundeti, who are aged persons has initiated number of vexatious proceedings as stated above for no valid or justified reasons. The proceedings initiated by him are subsequent to the proceedings

filed by the father of the Respondent who has validly succeeded through the Court below. In view of the matter, we are satisfied that the Respondent has habitually and without any reasonable terms instituted vexatious proceedings before the Co-operative Court against his aged parents as well as brothers. In the circumstances, we direct the Respondent not to file civil or criminal proceedings in future. We also grant stay of the civil or criminal proceedings initiated by the Respondent against Samayya Gundeti and Radhabai Gundeti pending before the competent Court, save and except the appeal. We also direct the Respondent to file an undertaking before this Court stating that he shall not initiate any civil or criminal proceedings against his parents as well as brothers without the leave of the Court. The said undertaking shall be filed within a period of four weeks. The Petition is allowed accordingly.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)